

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Public Advocates  
Office's Investigation of Communications  
Pertaining to the Wildfire Mitigation Plan of  
Pacific Gas and Electric Company

Not in a Proceeding

**MOTION OF THE PUBLIC ADVOCATES OFFICE  
FOR AN ORDER COMPELLING DATA REQUEST RESPONSES AND  
IMPOSING SANCTIONS ON PACIFIC GAS AND ELECTRIC COMPANY;  
[PROPOSED] RULING**

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## I. INTRODUCTION

Pursuant to Public Utilities Code Sections 309.5(e) and 314, and Rule 11.3 of the California Public Utilities Commission’s (“Commission’s” or “CPUC’s”) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (“Cal Advocates”) moves to compel responses to its data request, CalAdvocates-PGE-NonCase-AWM-09302021A, served on Pacific Gas and Electric Company (“PG&E”) on September 30, 2021, with responses due October 14, 2021 (hereinafter “Cal Advocates’ DR”).<sup>1</sup>

Cal Advocates’ DR seeks to identify and obtain from PG&E certain communications it has had with the Office of Energy Infrastructure Safety (“the Office of Energy Safety” or “OEIS”), and any CPUC Commissioners’ Offices, since and including July 1, 2021, regarding wildfire safety and wildfire mitigation topics including, but not limited to, the approval of PG&E’s wildfire mitigation plan (“WMP”). The Office of Energy Safety’s review of PG&E’s WMP and wildfire mitigation efforts, and its subsequent recommendation to the Commission on whether to approve or deny PG&E’s WMP, have a direct and immediate impact on the rates and availability of safe and reliable electric utility service for California ratepayers.<sup>2</sup> Thus, Cal Advocates requires this information as part of its statutory duty to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the Commission.<sup>3</sup>

Cal Advocates has the authority to compel a utility to produce information or documents on any subject, within or outside a Commission proceeding, that it deems necessary to perform its duties. Specifically, pursuant to Public Utilities (P.U.) Code Section 309.5(e), Cal Advocates

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<sup>1</sup> Rule 11.3(a) states:

A motion to compel or limit discovery is not eligible for resolution unless the parties to the dispute have previously met and conferred in a good faith effort to informally resolve the dispute. The motion shall state facts showing a good faith attempt at an informal resolution of the discovery dispute presented by the motion, and shall attach a proposed ruling that clearly indicates the relief requested.

<sup>2</sup> Pursuant to Public Utilities (P.U.) Code Section 8386, enacted as part of SB 901, all California electric utilities must “prepare and submit wildfire mitigation plans that describe the utilities’ plans to prevent, combat and respond to wildfires affecting their service territories.” R.18-10-007, *Order Instituting Rulemaking*, October 25, 2018, p. 2; see P.U. Code Sections 8386(a), (b). The Commission has a statutory responsibility to ratify the decisions of the Office of Infrastructure Safety on utility WMPs. P.U. Code Section 8386.3(a). The P.U. Code requires that utility recovery of costs related to wildfire mitigation plans be addressed in general rate case applications. P.U. Code Section 8386.4.

<sup>3</sup> P.U. Code Section 309.5(a).

“may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission.”<sup>4</sup> Similarly, P.U. Code Sections 314(a) provides that each officer or person employed by the commission, which includes Cal Advocates,<sup>5</sup> “may, at any time, inspect the accounts, books, papers, and documents of any public utility.”<sup>6</sup> Given this clear statutory authority, PG&E’s refusal to respond to Cal Advocates’ data request is without legal basis, and contrary to PG&E’s obligations under Public Utilities Code Sections 309.5(e) and 314.

Cal Advocates respectfully requests an expeditious ruling that both addresses the legal issues on the merits, namely that PG&E has not provided legitimate objections to its refusal to comply with statute requirements to respond to Cal Advocates’ DR, and includes sanctions for PG&E’s improper refusal to comply with its obligation to provide information to Cal Advocates.

## **II. BACKGROUND**

### **A. Data Requests at Issue.**

The Data Request questions include:

- (1) Cal Advocates’ DR **Question 1** pertaining to PG&E’s meetings with and presentations to OEIS.<sup>7</sup>

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<sup>4</sup> P.U. Code Section 309.5(e) states:

The [Public Advocates Office] may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.

<sup>5</sup> P.U. Code Section 309.5(a) states:

There is within the commission an independent Public Advocate’s Office of the Public Utilities Commission to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the office shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels.

<sup>6</sup> P.U. Code Section 314(a) states: “The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility.”

<sup>7</sup> Cal Advocates’ DR Question 1 seeks a list of all meetings and presentations held since July 1, 2021 between PG&E and OEIS related to wildfire safety or wildfire mitigation efforts, including but not limited to, Draft Resolution WSD-021, all subjects that fall under R.18-10-007, PG&E’s implementation of or changes to initiatives described in its Wildfire Mitigation Plan, WMP compliance, executive compensation, safety certification, and public safety power shutoffs. Data Request Question 1 requests that PG&E include the date, a brief description of the subject matter discussed, and the organizations or corporations in attendance, for each meeting listed in response to Question 1.

- (2) Cal Advocates' DR **Question 2**, pertaining to materials related to PG&E's meetings with and presentations to staff of Commissioners' offices.<sup>8</sup>
- (3) Cal Advocates' DR **Question 3**, pertaining to materials related to PG&E's meetings with and presentations to OEIS and Commissioners' offices.<sup>2</sup>
- (4) Cal Advocates' DR **Question 4**, pertaining to data requests related to PG&E's meetings with and presentations to OEIS.<sup>10</sup>
- (5) Cal Advocates' DR **Question 5**, pertaining to data requests related to PG&E's meetings with and presentations to CPUC Commissioners' offices.<sup>11</sup>

**B. PG&E's Objections to Cal Advocates' DR.**

PG&E has failed to identify any legal authority that supports its withholding the requested information. On October 14, 2021, the due date for responses to Cal Advocates' DR, PG&E objected to every question in the DR "on the basis of relevance and because it is overly broad and burdensome."<sup>12</sup> However, PG&E does not cite any facts that support its objections.<sup>13</sup> Instead, for Questions 1, 3, 4, and 5, PG&E states that OEIS was created by California statutory law and that "[i]t is unclear the relevance of the information requested to the Public Advocates Office and thus this request is objectionable on the basis of relevance and breadth" and because it is burdensome.<sup>14</sup> For Questions 2, 3, 4, and 5, PG&E also states, "[i]t is unclear the relevance of the information requested [all communications between CPUC Commissioners and/or CPUC

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<sup>8</sup> Cal Advocates DR Question 2, similarly seeks a list of all meetings and presentations held since July 1, 2021 between PG&E and any Commissioners of the CPUC or staff of the Commissioners of the CPUC, related to wildfire safety or wildfire mitigation efforts as defined in Question 1.

<sup>2</sup> Cal Advocates' DR Question 3 requests copies of any relevant materials – including meeting agendas, minutes, or transcripts, or presentation materials or any documents presented – from all the meetings and presentations listed in response to Question 1 and in response to Question 2.

<sup>10</sup> Cal Advocates' DR Question 4 requests copies of any data requests and PG&E's responses, resulting from any meetings and presentations listed in response to Question 1, from OEIS, the CPUC Wildfire Safety Division, a CPUC Commissioner's Office, and a staff member of a division of the CPUC, except for Cal Advocates.

<sup>11</sup> Cal Advocates' DR Question 5 requests copies of any data requests and PG&E's responses resulting from any meetings and presentations listed in response to Question 2 – regarding meetings between PG&E and any Commissioner's Office – from the same entities listed in Question 4.

<sup>12</sup> See Exhibits (Exhs.) B.1-B.5 – PG&E Responses to Cal Advocates' DR Questions 1, 2, 3, 4, 5.

<sup>13</sup> See Exhs. B.1-B.5 - PG&E Responses to Cal Advocates' DR Questions 1, 2, 3, 4, 5.

<sup>14</sup> See Exhs. B.1, B.3, B.4, B.5 - PG&E Responses to Cal Advocates' DR Questions 1, 3, 4, 5.

Staff related to wildfire safety or wildfire mitigation efforts] to the Public Advocates Office and thus this request is objectionable on the basis of relevance and breadth. In addition, this request is objectionable because it is burdensome.”<sup>15</sup> PG&E also states, “to the extent communications, if any, occurred with CPUC Commissioners and/or their advisors and these communications required an *ex parte* notice consistent with the Rules of Practice and Procedure,<sup>16</sup> an *ex parte* notice has been filed and is thus equally available to the Public Advocates Office.”<sup>17</sup> As discussed in more detail below, PG&E’s statement does not take into account its communications with CPUC Commissioners or their staff that do not trigger *ex parte* requirements notices.

### **C. Meet and Confer Meeting and Subsequent Communications.**

Cal Advocates initiated and engaged in a meet and confer process in a good faith effort to informally resolve the discovery dispute process. Specifically, on October 21, 2021, Cal Advocates requested a “meet and confer” meeting regarding PG&E’s objections and refusal to provide responses to Cal Advocates’ DR.<sup>18</sup> The meet and confer process included a video conference on October 25, 2021, between Cal Advocates and PG&E.<sup>19</sup> In an effort to obtain prompt responses, Cal Advocates emailed PG&E that same day, and offered to reduce the alleged burden by allowing production to occur in two stages.<sup>20</sup> Cal Advocates also provided

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<sup>15</sup> See Exhs. B.2-B.5 - PG&E Responses to Cal Advocates’ DR Questions 2, 3, 4, 5.

<sup>16</sup> See Rule 8.4: Notice of *ex parte* communications shall be filed no more than three working days after the communication. The notice shall include:

- (1) The date, time, and location of the communication, and whether it was oral, written, or a combination of both, and the communication medium used;
- (2) The identities of each decisionmaker involved, the person initiating the communication, and any persons present during such communication;
- (3) The topic of the communication, the applicable proceeding numbers, and a description of the interested person's, but not the decisionmaker's, communication including a summary of all of the points or arguments made in the communication, together with any request, recommendation, or advice provided to the decisionmaker, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

<sup>17</sup> See Exhs. B.2-B.5 - PG&E Responses to Cal Advocates’ DR Questions 2, 3, 4, 5.

<sup>18</sup> Exh. E – October 21, 2021 Public Advocates Office email.

<sup>19</sup> See Exh. F – October 25, 2021 4:32 p.m. Public Advocates Office.

<sup>20</sup> See Exh. F – October 25, 2021 4:32 p.m. Public Advocates Office email.

further clarification on its definition of the word “meeting,” in response to PG&E’s claimed misunderstanding of the word.<sup>21</sup> Cal Advocates requested a response by October 26, 2021 and stated its intent to file a motion to compel and seek sanctions if it did not receive a response.<sup>22</sup> PG&E requested more time to respond to whether it would agree to Cal Advocates’ October 25, 2021 offer.<sup>23</sup> Cal Advocates subsequently requested that PG&E respond to Cal Advocates by October 29, 2021.<sup>24</sup>

On October 27, 2021, PG&E contacted Cal Advocates to inform Cal Advocates that it would not provide a response to Cal Advocates’ DR.<sup>25</sup> On October 29, 2021, Cal Advocates informed PG&E that it had to respond by November 2, 2021.<sup>26</sup> On November 2, 2021, PG&E indicated that it would not respond to questions related to its meetings with OEIS (Cal Advocates’ DR Question 1 and 4, and partially question 3).<sup>27</sup> To date, PG&E has only provided a full response to DR question 2<sup>28</sup> and a partial response to DR Question 3 (in the form of presentation materials) for one meeting with a Commissioner’s office.<sup>29</sup>

#### **D. The Requested Documents.**

Cal Advocates seeks an order to compel production of responses to Cal Advocates’ DR questions 1, 3, 4, and 5.<sup>30</sup> Specifically, Cal Advocates seeks the following:

- Response to Cal Advocates’ DR **Question 1** pertaining to PG&E’s meetings with and presentations to OEIS

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<sup>21</sup> See Exh. F – October 25, 2021 4:32 p.m. Public Advocates Office email.

<sup>22</sup> See Exh. F – October 25, 2021 4:32 p.m. Public Advocates Office email.

<sup>23</sup> See Exh. G – October 25, 2021 6:44 p.m. PG&E email.

<sup>24</sup> See Exh. H, I – October 26, 2021 Public Advocates Office emails (9:40 a.m., 10:25 a.m.).

<sup>25</sup> See Exh. J – October 29, 2021 Public Advocates Office email. Also, in this email, Cal Advocates refers to a discussion between Public Advocates Office Interim Director Amy Yip-Kikugawa and OEIS’s director. This discussion in fact did occur on October 28, 2021.

<sup>26</sup> See Exh. J – October 29, 2021 Public Advocates Office email.

<sup>27</sup> See Exh. K – November 2, 2021 PG&E email.

<sup>28</sup> See Exh. M – Revised PG&E response to Cal Advocates’ DR Question 2.

<sup>29</sup> See Exh. L.1-L.2 - Revised PG&E response to Cal Advocates’ DR Question 3 and attachment.

<sup>30</sup> PG&E provided a complete response to DR question 2 on November 12, 2021. See Exh. M – Revised PG&E response to Cal Advocates’ DR Question 2. PG&E provided a partial response to Question 3 on November 5, 2021, that consisted of presentation materials for one meeting with a Commissioner’s office, Commissioner Guzman Aceves’ office, on October 8, 2021. See Exh. L.1-L.2 - Revised PG&E response to Cal Advocates’ DR Question 3 and attachment.

- Response to Cal Advocates' DR **Question 3**, pertaining to all materials related to PG&E's meetings with and presentations to OEIS (related to Question 1) and meetings with and presentations to CPUC Commissioners' offices (related to Question 2).
- Response to Cal Advocates' DR **Question 4**, pertaining to data requests related to PG&E's meetings with and presentations to OEIS (related to Question 1).
- Response to Cal Advocates' DR **Question 5**, pertaining to data requests related to PG&E's meetings with and presentations to CPUC Commissioners' offices (related to Question 2).

### III. DISCUSSION

#### A. Cal Advocates is entitled to the information it seeks under Public Utilities Code Sections 309.5(e) and 314.

Cal Advocates is entitled to the information requested, and PG&E, as a regulated entity, is obligated to provide the information pursuant to both statute and Commission decisions. Cal Advocates' statutory discovery rights, pursuant to Public Utilities Code Sections 309.5 and 314 include access to information related to the operation of PG&E's electric facilities. In relevant part, Section 314(a) provides:

The commission, each commissioner, and each officer and person employed by the commission *may, at any time, inspect the accounts, books, papers, and documents* of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs.<sup>31</sup>

Section 314 has been found to apply to all Commission staff, including Cal Advocates.<sup>32</sup> Thus, Cal Advocates has authority "to undertake audits or investigations, and ask questions *at any time* and *for any purpose* related to their scope of work on behalf of the Commission and the people of the State of California."<sup>33</sup>

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<sup>31</sup> P.U. Code Section 314(a) (emphasis added).

<sup>32</sup> P.U. Code Sections 309.5(a) ("There is within the commission an independent Public Advocate's Office of the Public Utilities Commission to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission"); 314(a) (applies to "each officer and person employed by the commission").

<sup>33</sup> D.01-08-062, pp. 6-7 (emphasis in original); *see also* Conclusions of Law 2-3 at p.11. At the time D.01-08-062 was issued, the Public Advocates Office was known as the Office of Ratepayer Advocates.



Similarly, Public Utilities Code Section 309.5(e) provides “[t]he [Public Advocates Office] may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission...”<sup>34</sup> Notably, Public Utilities Code Section 309.5(e) contains no limitation on the type of information that Cal Advocates can seek in the pursuit of its statutory duties. Rather, it specifically allows for discovery of any information that Cal Advocates deems necessary.

Cal Advocates requests the information at issue here to understand, among other things, what communications PG&E had with OEIS related to the approval of the PG&E’s WMP that were not publicly noticed.<sup>35</sup> Cal Advocates is already aware that PG&E made a presentation to the Office of Energy Safety in May 2021, which though not publicly noticed, is referenced in OEIS’ Draft Action Statement on PG&E’s WMP 2021 Update.<sup>36</sup> Cal Advocates identified this May 2021 presentation as illustrative of the connection between its data request and its statutory mandate.<sup>37</sup> Cal Advocates’ DR seeks information related to other communications PG&E had with OEIS that may not have been noticed to stakeholders.<sup>38</sup>

Cal Advocates also seeks information about communications PG&E had with the Commissioners’ offices staff prior to the Commissioners’ vote to approve PG&E’s 2021 WMP update.<sup>39</sup> Cal Advocates was made aware of a pending meeting between PG&E and the staff of Commissioner Guzman Aceves’ office on October 8, 2021, by a three day advance notice filed on October 5, 2021.<sup>40</sup> However, PG&E was not required to and did not file a post meeting report of an *ex parte* communication.<sup>41</sup> As indicated in an October 6, 2021 email by CPUC’s general

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<sup>34</sup> P.U. Code Section 309.5(e) (emphasis added).

<sup>35</sup> See Exh. A - Cal Advocates’ DR, Questions 1, 3, 4.

<sup>36</sup> See *Office of Energy Infrastructure Safety’s Draft Evaluation of 2021 Wildfire Mitigation Plan Update, Pacific Gas and Electric Company*, p. 8 n. 22 (Energy Safety included in its overall WMP review a presentation PG&E gave to OEIS on May 21, 2021, of the changes it made to its decision-making process).

<sup>37</sup> See Exh. F - October 25, 2021 4:32 p.m. Public Advocates Office email.

<sup>38</sup> See Exh. A - Cal Advocates’ DR, Question 1, 3, 4.

<sup>39</sup> See Exh. A - Cal Advocates’ DR, Questions 2, 3, 5.

<sup>40</sup> See Exh. C – PG&E Notice of *Ex Parte* Communication, October 5, 2021.

<sup>41</sup> Under Commission Rule 8.1(b) (emphasis added), “Ex parte communication” means a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

counsel, the noticed October 8, 2021 communication did not involve a formal proceeding and did not trigger the *ex parte* rules.<sup>42</sup> Cal Advocates' DR seeks to investigate the incidence, content, and reporting of other WMP-related communications PG&E may have had with Commissioners' offices that were not noticed by PG&E.

Therefore, Cal Advocates' data requests are directly related to Cal Advocates' statutory interests in supporting the safe and reliable operation of PG&E's facilities and protecting ratepayers from unreasonable costs. PG&E refuses to acknowledge Cal Advocates' statutory interest where it states "[it] does not believe that Cal Advocates has adequately explained the relevance of th[e] request to Cal Advocates' statutory mission"<sup>43</sup>

Even if we ignore the fact that the plain language of Public Utilities Code Section 309.5(e) allows the Public Advocates Office to "compel the production or disclosure of any information it"—rather than PG&E—"deems necessary," this discovery is necessary and appropriate. The fact is, PG&E has a well-documented and troubling history of engaging in inappropriate communications that violate the *ex parte* rules to the detriment of ratepayers.<sup>44</sup>

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- (1) **concerns any issue in a formal proceeding**, other than procedural matters,
  - (2) takes place between an interested person and a decisionmaker, whether from the interested person to the decisionmaker or from the decisionmaker to the interested person or a combination thereof, and
  - (3) does not occur in a public hearing, workshop, or other public forum, that has been noticed to the official service list or on the record of the proceeding.

<sup>42</sup> See Exh. D - October 6, 2021 email from Rachel Gallegos for Arocles Aguilar, General Counsel. Per an email sent October 6, 2021, from Arocles Aguilar, General Counsel, to the service list of R.18-10-007, Draft Resolution WSD-021 pertaining to PG&E's WMP "[wa]s issued outside of a formal proceeding ..." and "[i]n general, issuance of a resolution does not trigger application of the Commission's *ex parte* rules, which, pursuant to Rules of Practice and Procedure, Rule 8.1, apply only to formal proceedings." Therefore, "any communications regarding resolutions are not subject to the Commission's *ex parte* rules."

<sup>43</sup> See Exh. K – November 2, 2021 PG&E email; Exh. B.1 – PG&E Response to Cal Advocates' DR Question 1.

<sup>44</sup> *Order Instituting Investigation And Ordering Pacific Gas And Electric Company To Appear And Show Cause Why It Should Not Be Sanctioned For Violations Of Article 8 And Rule 1.1 Of The Rules Of Practice And Procedure And Public Utilities Code Sections 1701.2 And 1701.3*, I.15-11-015, November 23, 2015, pp. 1-3; D.18-04-014, May 3, 2018, Attachment A - *Joint Motion Of The City Of San Bruno, The City Of San Carlos, The Office Of Ratepayer Advocates, The Safety And Enforcement Division, The Utility Reform Network, And Pacific Gas And Electric Company For Adoption Of Settlement Agreement*, March 28, 2017 ("March 2017 Motion to Adopt Phase I Settlement Agreement"); *Joint Motion Of The City Of San Bruno, The City Of San Carlos, The Public Advocates Office, The Safety And Enforcement Division, The Utility Reform Network, And Pacific Gas And Electric Company For Adoption Of Phase II Settlement Agreement*, June 28, 2019 ("June 2019 Motion to Adopt Phase II Settlement Agreement").

Barring or limiting discovery related to PG&E's communications with public agency decision makers, regardless of whether they are internal or external to the CPUC, would disregard PG&E's troubling history of unauthorized communications, violate Public Utilities Code Section 309.5(e), and undermine Commission rules and government statutes that promote transparency.

**B. The Motion to Compel should be Granted as a Matter of Law.**

Despite numerous opportunities to do so, PG&E has failed to provide any legal authority that supports its withholding the requested information from Cal Advocates. Instead, PG&E vaguely claims that Cal Advocates' DR is impermissible because: 1) it seeks information and materials related to meetings with a state agency (the Office of Energy Safety) other than the CPUC; 2) it lacks relevance; and 3) it is unduly burdensome. As shown below, PG&E's arguments are unsupported by law or fact.

As an initial matter, PG&E does not claim the information at issue is either privileged or confidential. Moreover, PG&E cites nothing in law or statute that might somehow limit Cal Advocate's authority to request information disclosed by PG&E, or any other utility, to agencies outside the CPUC. Nor does PG&E point to any rule or regulation of OEIS that bars a utility from sharing information that it disclosed to OEIS. Instead, PG&E vaguely claims that Cal Advocates' request is impermissible merely because, among other things, it goes to information and materials related to meetings with the Office of Energy Safety.<sup>45</sup>

PG&E's claim that Cal Advocates' request is not relevant is equally unavailing. PG&E does not dispute that pursuant to P.U. Code Section 309.5(e), Cal Advocates may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission.<sup>46</sup> Nor does PG&E argue either that the communications sought do not relate to wildfire safety and mitigation, or that said topics will not have a direct and immediate impact on the rates and availability of safe and reliable electric utility service. Thus, while PG&E acknowledges the broad reach of Cal Advocates' discovery rights and does not dispute that the data request questions it refuses to answer relate to safe and reliable electric utility service for California ratepayers, it somehow maintains that the data request questions are

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<sup>45</sup> See Exh. K – November 2, 2021 PG&E email; Exhs. B.1, B.3-B.5 – PG&E Responses to Cal Advocates' DR Questions 1, 3, 4, 5.

<sup>46</sup> P.U. Code § 309.5(e).

not relevant to Cal Advocates' statutory mission.<sup>47</sup> Indeed, even Cal Advocates' offer to narrow the data request to specific wildfire safety or wildfire mitigation topics is summarily dismissed by PG&E.

Finally, while PG&E objects on claims of undue burden, PG&E shows in no way the request to be unduly burdensome and summarily rejects offers to ease the burden it alleges. For example, PG&E does not indicate that the number of meetings at issue is unduly burdensome, nor how providing documents it already provided to or received from OEIS is an undue burden.<sup>48</sup>

As PG&E fails to present a valid claim of privilege or any legally recognized basis to object to discovery, Cal Advocates hereby requests the Commission order PG&E to provide full and complete answers to its discovery requests within 10 days.

### **C. Monetary Sanctions are Necessary and Appropriate.**

Cal Advocates recommends the Commission impose a penalty of \$1,000 a day for each day that PG&E wrongly withheld complete and accurate responses to Cal Advocates' DR. These fines would run from October 14, 2021—the due date for PG&E's responses to Cal Advocates' DR—until the Commission issues a decision on this motion. Thereafter, the penalty should be \$2,000 per day until PG&E produces complete and accurate responses. This differential is necessary to promote prompt compliance with the Commission's order compelling production and dissuade PG&E from engaging in further bad faith legal tactics.

#### **1. PG&E's Actions Demonstrate Bad Faith and Warrants Monetary Sanctions.**

As discussed above, despite numerous opportunities to do so, PG&E does not provide any basis in law for their refusal to provide responses to the DR. Under these circumstances, the only logical conclusion to be reached is that PG&E has no legal basis for refusing to provide the requested information. Absent a viable legal basis, PG&E's refusal to provide responsive

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<sup>47</sup> Given the unsubstantiated and indeed conflicting nature of PG&E's contentions, we need not now address the fact that the plain language of Section 309.5(e) makes clear that Cal Advocates, not the utility, is to be the arbitrator of what information is necessary to perform Cal Advocates statutory duties.

<sup>48</sup> In an effort to obtain prompt responses, Cal Advocates offered to reduce the alleged burden by allowing responses to be made in two stages. PG&E declined this offer. *See* Exh. F – October 25, 2021 4:32 p.m. Public Advocates Office email.

answers to the DRs is, by definition, lacking in good faith. PG&E's lack of good faith warrants sanctions.

## **2. PG&E's obstructionist behavior has harmed Cal Advocates, Ratepayers, and Commission Staff.**

As set forth above, in marked contrast to Cal Advocates having scheduled multiple meet and confers, providing a number of clarifications, and making offers to address any burdens allegedly imposed on PG&E, PG&E is unwilling or unable to set forth any legal basis for withholding discovery, repeatedly requests additional time to respond (only to subsequently provide a substantially similar response), and thus far only provides one full and one partial response.<sup>49</sup> In short, by virtue of its unfounded, bad faith objections, PG&E has and continues to wrongly withhold discovery and waste Cal Advocates' scarce resources. These actions detract from Cal Advocates' representation of ratepayers. Allowing such behavior will potentially encourage similar responses to requests of other Commission staff.<sup>50</sup> While Commission rules (unlike civil law) do not require PG&E to pay Cal Advocates' incurred cost, they do provide for monetary penalties to dissuade such wasteful, bad faith acts.<sup>51</sup>

## **3. Sanctions are required to curb PG&E's obstructionist behavior.**

PGE is engaging in a bad faith pattern and practice of denial and delay that flouts its regulatory obligation to provide information to Cal Advocates. While such behavior is never appropriate, it is particularly problematic and all the more sanction-worthy here for two reasons.

First, rather than occur in a vacuum, the discovery PG&E wrongly withholds relates to communications about its WMP.<sup>52</sup> Expeditious production of this discovery is necessary because of the truncated time-frames provided for public comment on the 2022 WMPs. Despite that fact that hundreds of millions and perhaps billions of dollars are or will be at stake, OEIS, in

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<sup>49</sup> Exhs. L.1-L.2 – Revised PG&E response to Cal Advocates' DR Question 3 and attachment; Exh. M – Revised PG&E response to Cal Advocates' DR Question 2.

<sup>50</sup> D.01-08-062, p. 6 (“[Cal Advocates’] scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners. It [is] constrained solely by a statutory provision that provides a mechanism unique to [Cal Advocates] for addressing discovery disputes.”); Finding of Fact 5 at p. 10 (“[Cal Advocates] staff members are Commission staff members as that term is used in § 314.”).

<sup>51</sup> See, e.g., P.U. Code Sections 2107, 2108.

<sup>52</sup> See, e.g., Exh. A – Cal Advocates' DR Questions 1, 2, 3, 4, 5.

its previous iteration as the Wildfire Safety Division, has traditionally allowed only about 60 days for public review of the utilities' WMP reports, related discovery, and the submission of opening comments.<sup>53</sup> OEIS has recently revised its schedule and now allows only 27 days for members of the public to comment on the 2022 WMP updates.<sup>54</sup> Thus, PG&E's wrongful refusal to cooperate with Cal Advocate's discovery appears more rooted in its desire to obstruct meaningful review of its WMP than in the law.

Second, PG&E has an acknowledged history of engaging in improper communications. Between 2010 to 2014, PG&E engaged in improper *ex parte* communications with Commission personnel and failed to self-report or late-noticed their *ex parte* communications, in numerous proceedings.<sup>55</sup> After the Commission opened an investigation of PG&E's actions and possible violations of Article 8 of the Rules of Practice and Procedure (C.C.R. Title 20, Div. 1, Ch. 1, Sections 8.1 *et seq.*), Rule 1.1 of the Rules of Practice and Procedure, and P.U. Code sections 1701.2(c) and 1701.3(c),<sup>56</sup> PG&E admitted that it had violated these rules<sup>57</sup> and agreed to pay financial remedies and penalties of \$97.5 million and \$10 million.<sup>58</sup>

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<sup>53</sup> See WSD-001: Procedures for WSD Review of WMPs, January 24, 2020 (providing 60 days for opening comments on WMPs); Lucy Morgans Letter Extending Opening Comment Deadline, March 1, 2021 (with extension, providing 52 days for opening comments on WMPs).

<sup>54</sup> Attachment 5 – Guidelines for Submission and Review of 2022 Wildfire Mitigation Plan Updates, Office of Energy Infrastructure Safety, pp. 6-9.

<sup>55</sup> Order Instituting Investigation and Ordering Pacific Gas and Electric Company to Appear and Show Cause Why It Should Not Be Sanctioned for Violations of Article 8 and Rule 1.1 of the Rules of Practice and Procedure and Public Utilities Code Sections 1701.2 And 1701.3, I.15-11-015, November 23, 2015, pp. 1-3; D.18-04-014, May 3, 2018, Attachment A - March 2017 Motion to Adopt Phase I Settlement Agreement; June 2019 Motion to Adopt Phase II Settlement Agreement.

<sup>56</sup> Order Instituting Investigation and Ordering Pacific Gas and Electric Company to Appear and Show Cause Why It Should Not Be Sanctioned for Violations of Article 8 and Rule 1.1 of the Rules of Practice and Procedure and Public Utilities Code Sections 1701.2 And 1701.3, I.15-11-015, November 23, 2015, pp. 1-3.

<sup>57</sup> D.18-04-014, May 3, 2018, Attachment A - Joint Motion Of The City Of San Bruno, The City Of San Carlos, The Office Of Ratepayer Advocates, The Safety And Enforcement Division, The Utility Reform Network, And Pacific Gas And Electric Company For Adoption Of Settlement Agreement, March 28, 2017 ("March 2017 Motion to Adopt Phase I Settlement Agreement"), p. 2; Joint Motion Of The City Of San Bruno, The City Of San Carlos, The Public Advocates Office, The Safety And Enforcement Division, The Utility Reform Network, And Pacific Gas And Electric Company For Adoption Of Phase II Settlement Agreement, June 28, 2019 ("June 2019 Motion to Adopt Phase II Settlement Agreement").

<sup>58</sup> D.19-12-013, December 12, 2019, pp. 8-9; D.18-04-014, May 3, 2018, pp. 27-29; June 2019 Motion to Adopt Phase II Settlement Agreement, pp. 2-3, 9-10.

PG&E's having engaged in and been fined for improper communications underscores the both the impropriety of its bad faith refusal to provide responses to Cal Advocates' DRs and the need to assess monetary sanctions to curb this behavior.

#### IV. CONCLUSION

For these reasons, in addition to granting Cal Advocates' Motion to Compel the production of the requested information, the Commission should impose sanctions on PG&E. Specifically, the Commission should find that PG&E has failed to comply with both Sections 309.5 and 314 of the Public Utilities Code and require PG&E to pay penalties for each calendar day it fails to produce complete and accurate responses to each of Cal Advocates' discovery request questions. Public Utilities Code sections 309.5(e) and 314 provide for fines of at least \$500 and no more than \$100,000 per violation, per day.<sup>59</sup> Thus, on finding violations of Public Utilities Code sections 309.5(e) and 314, the Commission must impose a fine of at least \$1,000 per day (\$500 per code section for violating each code sections). Put in context, the resulting penalty amount would be a mere 0.001774 % of PG&E's 2021 wildfire mitigation funding request.<sup>60</sup>

Cal Advocates respectfully requests the Commission order the production of the outstanding data request responses described herein and in the attached Ruling. In addition, PG&E should be sanctioned in the manner and amounts set forth above. Cal Advocates urges the Commission to set forth its rationale for its ruling, given the likelihood of continuing issues related to utilities' expeditious production of documents in discovery, which is necessary because of truncated time frames for public comment, in for example, OEIS' recently issued 27-day time frame for members of the public to comment on the 2022 WMP updates.<sup>61</sup>

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<sup>59</sup> Public Utilities Code Sections 2107 and 2108.

<sup>60</sup> This requested penalty is estimated to total \$88,000, which is \$68,000 (\$1,000 per question per day x 68 days from October 14, 2021 to December 20, 2021, the approximate date of an issued decision on this motion) + \$20,000 (\$2,000 x 10 days, estimate of additional days for production of documents after a decision). PG&E's total spending forecast is \$4.96 billion in 2021. See Comments of the Public Advocates Office on the 2021 Wildfire Mitigation Plan Update of Pacific Gas and Electric Company, March 29, 2021, p. 10, footnotes 28, 29 (citing PG&E's 2021 WMP Update, Table 12).

<sup>61</sup> Attachment 5 – Guidelines for Submission and Review of 2022 Wildfire Mitigation Plan Updates, Office of Energy Infrastructure Safety, pp. 6-9.

Respectfully submitted,

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November 30, 2021



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Public Advocates  
Office's Investigation of Communications  
Pertaining to the Wildfire Mitigation Plan of  
Pacific Gas and Electric Company

Not in a Proceeding

**[PROPOSED] RULING**

Having reviewed the Public Advocates Office's November 30, 2021 Motion for an Order Compelling Data Request Responses and Imposing Sanctions on Pacific Gas and Electric Company (PG&E), and the arguments and supporting authority and evidence cited therein;

And, GOOD CAUSE APPEARING THEREFOR; the Motion of the Public Advocates Office to Compel and seeking Sanctions is **GRANTED**. PG&E has not provided legitimate objections to its refusal to comply with statute requirements, Public Utilities Code Sections 309.5(e) and 314, to respond to the Public Advocates Office's data request, CalAdvocates-PGE-NonCase-AWM-09302021A. PG&E is hereby sanctioned for its improper refusal to comply with its obligation to provide information to the Public Advocates Office.

(1) PG&E is ordered to provide complete and full responses to the following outstanding discovery requests propounded by the Public Advocates Office:

CalAdvocates-PGE-NonCase-AWM-09302021A Propounded to  
PG&E on September 30, 2021, Responses Due October 14, 2021,  
**Questions 1, 3-5.**

(2) PG&E is hereby ordered to pay fines of \$1,000 per day it fails to produce complete and accurate responses to each question in data request CalAdvocates-PGE-NonCase-AWM-09302021A from October 14, 2021, and \$2,000 per day from the date of the Commission's decision on the Public Advocates Office's motion to compel and for sanctions, until PG&E produces complete and accurate responses to each question to data request CalAdvocates-PGE-NonCase-AWM-09302021A.

**IT IS SO ORDERED.**

Dated \_\_\_\_\_

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ADMINISTRATIVE LAW JUDGE